

PROPOSED DECISION

Agenda ID #12579 (Rev. 1)

Ratesetting

12/19/2013 Item 13

Decision PROPOSED DECISION OF ALJ PULSIFER (Mailed 11/18/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of City of Fresno for
Modification of Decision 03-04-030.

Application 12-07-010
(Filed July 9, 2012)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Introduction

On July 9, 2012, the City of Fresno (Fresno) filed Application 12-07-010 seeking a modification of Decision 03-04-030, which is entitled: "Opinion on Cost Responsibility Surcharge Mechanism for Customer Generation Departing Load." This decision approves and adopts the Settlement Agreement that has been entered into between Fresno and Pacific Gas and Electric Company. The Settlement Agreement, which is attached to this decision, resolves all issues raised in the application filed by Fresno.

2. Background

In November 2004, City of Fresno (Fresno) began operation of an electric generator at its wastewater treatment facility (the Plant) fueled by a mix of natural gas and biogas, and that replaced a portion of the electricity previously supplied by Pacific Gas and Electric Company (PG&E). Fresno paid "non-bypassable charges" (NBCs) for generation from the Plant attributable to the portion of fuel input coming from natural gas for the period November 2004

to March 2013. However, Fresno did not pay NBCs for generation attributable to the portion of Plant's fuel input from biogas, citing the biogas exemption set forth in Decision (D.) 03-04-030. PG&E disagreed with Fresno regarding its entitlement to this exemption. From 2006 to 2012, PG&E and Fresno negotiated in good faith to resolve all of their disputes regarding Fresno's NBC obligations associated with the Plant.

Fresno filed the instant application for modification or clarification of D.03-04-030 as it applies to its cost responsibility surcharges (CRS) obligations associated with generation from the Plant. Fresno sought the modification to confirm its entitlement to an exemption from NBCs for the whole generation output from a generator fueled by a mix of natural gas and "bio-solids, animal and non-animal waste, municipal waste streams and food and food-processing byproducts." (Application at 14.) PG&E filed a protest on August 24, 2012, opposing Fresno's application, and on September 4, 2012, Fresno filed a Reply to the Protest.

3. Positions of Parties Prior to Settlement

As the basis for its application filing, Fresno referenced the following provision in D.03-04-030: "Biogas digester customer generation eligible under [Assembly Bill] AB 2228 are not required to pay any [cost responsibility surcharge] CRS charges." (D.03-04-030, Ordering Paragraph 6 at 65.) In other words, to qualify for the biogas digester exemption, the facility had to meet the AB 2228 statutory definition.

Fresno's application for modification raised two primary issues in relation to its Plant's claimed exemptions under provisions of D.03-04-030. The first issue related to the volume of natural gas used as part of the fuel mix for the Plant. Because natural gas usage was required by the local air quality authority, and at a

percentage set by that authority, Fresno claimed that exclusion from any otherwise applicable exemption would not be appropriate. (Application for Modification at 11, n.17; Reply to Protest at 5.) PG&E disagreed on this point, arguing that no such exemption exists in D.03-04-030. (PG&E Protest at 5-6.)

The second issue raised in Fresno's application related to the percentage of municipal solid waste used as part of the fuel mix for the Plant. Fresno's position was that the Plant qualifies as an eligible biogas digester as defined in AB 2228 (as codified at Public Utilities Code Section 2827.9) and is therefore exempt from CRS under the Decision. (Application for Modification at 4; Reply to Protest at 6.) PG&E disagreed, arguing that the definition of eligible biogas digester did not include the use of non-animal waste, municipal waste streams and food and food-processing byproducts, as reflected in the Plant's fuel mix. (PG&E Protest at 5.)

PG&E opposed Fresno's Application claiming that the requested modifications were contrary to the express language and public policy underlying D.03-04-030, related law, and the public interest. PG&E argued that the Commission should reject Fresno's request for a complete exemption from NBCs for generators fueled by a mix of biogas (including non-animal waste and other forms of waste) and natural gas. PG&E claimed Fresno's request was not supported by D.03-04-030, violated the definitions in AB 2228, was inconsistent with the public policy underlying D.03-04-030, and was unfair to other customer generation departing load that currently pay NBCs.

4. Procedural Background Leading to the Settlement Agreement

A Prehearing Conference (PHC) was held on December 21, 2012. The only active parties were Fresno and PG&E. At the PHC, the parties indicated they were amenable to renewing settlement discussions rather than proceeding with

litigation. (PHC Transcript at 3-5.) Fresno and PG&E met and conferred on several occasions thereafter through early 2013. On February 15, 2013, counsel for PG&E informed Administrative Law Judge (ALJ) Pulsifer that PG&E's management and Fresno's legal and utility divisions had reached an agreement on a settlement in principle to resolve the application for modification, subject to approval of such settlement in principle by Fresno's City Council.

On August 15, 2013, Fresno and PG&E (collectively, the Settling Parties) filed a motion for adoption of the "Settlement Agreement Between Pacific Gas and Electric Company and the City of Fresno Regarding Departing Load Charges Under PG&E Electric Rate Schedule ECGDL" (Settlement Agreement), appended to this decision as Attachment 1 hereto.

The Settling Parties agreed to the following substantive compromises of their respective litigation positions as part of the Settlement Agreement.

- No NBC payments made to date by the City of Fresno to PG&E will be refunded;
- The City will not be charged any additional NBCs associated with the Plant's generation to date; further;
- On a going-forward basis, the City will pay NBCs only for that portion of the Plant's generation fueled by natural gas, using the methodology currently employed but with a 2% exemption to reflect the City's technical start-up needs for its plant.

Although the record in this proceeding is limited, the Settling Parties argue that the Settlement Agreement is reasonable in light of the record. In addition, while the disputes center on statutory and regulatory provisions that are now several years old (and in the case of the statute, no longer operative), no part of the Settlement Agreement runs counter to any of those provisions. The Settling Parties argue that the Settlement Agreement is reasonable specifically in light of those provisions, and that the settlement agreement is in the public interest.

5. Discussion

As explained below, we approve and adopt the Settlement Agreement, shown as Attachment 1 to this decision. California has a strong public policy favoring settlements. This policy supports many worthwhile goals, such as reducing litigation expenses, conserving scarce resources of parties and the Commission, and allowing parties to reduce the risk that litigation will produce unacceptable results. We have adopted specific rules regarding approval of settlements, as follows:

The Commission will not approve stipulations or settlements whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest.¹

We have reviewed the Settlement Agreement as presented in Attachment 1, and find it consistent with applicable state and federal law, reasonable in light of the whole record, and in the public interest. The Settling Parties agree that, on a going-forward basis, Fresno will pay NBCs only for that portion of the Plant's generation fueled by natural gas, using the methodology currently employed but with a 2% exemption to reflect the Fresno's technical start-up needs for its Plant. This agreement reflects Settling Parties' concession that the bio-solids proportion of the Plant's generation should reasonably qualify for the biogas-digester exemption of D.03-04-030, and that an additional 2% exemption reasonably reflects the amount of natural gas needed to start up the biogas digester's operations.

In assessing settlements, we consider individual settlement provisions but, in light of the strong public policy favoring settlements, we do not base our

¹ Rule 12.1(d) of the Commission's Rules of Practice and Procedure (Rules).

conclusion on whether any single provision is an optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.

Settlements represent compromises of opposing parties' positions. In the context of the attached Settlement Agreement, parties representing opposing interests reached a compromise that is acceptable to both parties. The agreement reasonably compromises the litigation positions of Fresno and PG&E. The settlement sums fall approximately equally between Fresno's litigation position of a full CRS exemption (and refund of past amounts paid) and PG&E's litigation position of no CRS exemption (and no refund of past amounts paid). By resolving these issues without requiring litigation, the Settlement Agreement preserves time and resources. Additionally where specific issues were identified and resolved in the Settlement Agreement the results are reasonable and consistent with the record.

Because the Settlement Agreement meets our criteria for approval, we find it reasonable and hereby approve it. Accordingly, since our approval of the settlement resolves all issues relating to this application, we close the application.

6. Categorization and Need for Hearings

In Resolution ALJ-176-3298 dated August 2, 2012, the Commission preliminarily categorized this application as Ratesetting, and preliminarily determined that hearings were necessary. Subsequent to this determination, a PHC was held on December 21, 2012, as noted previously. At the PHC, parties expressed a preference for renewing settlement discussions rather than holding evidentiary hearings. As a result of the subsequent Settlement Agreement, no party requested evidentiary hearings. Accordingly, the hearing determination is changed to state that no evidentiary hearings are necessary.

7. Comments on Proposed Decision

The proposed decision of ALJ Pulsifer in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure (Rules). No comments were filed.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. Pursuant to the provisions of D.03-04-030, the Commission has approved tariffs applicable to retail service provided by PG&E that provide an exemption from CRS also described as NBCs that include nuclear decommissioning and public purpose program charges for biogas generation.

2. In November 2004, Fresno began operation of an electric generator at its wastewater treatment facility fueled by a mix of natural gas and biogas, and that replaced a portion of the electricity previously supplied by PG&E.

3. The San Joaquin Valley Air Pollution Control District until recently required Fresno to use a mixture of natural gas and biogas to fuel its generator for air quality reasons.

4. Fresno paid NBCs to PG&E under Electric Schedule E-DCG for generation from its wastewater treatment facility attributable to the portion of fuel input coming from natural gas from November 2004 to March 2013.

5. Fresno did not pay NBCs for generation attributable to the portion of its wastewater treatment facility fuel input from biogas, citing the biogas exemption provisions set forth in D.03-04-030.

6. Ordering Paragraph 6 of D.03-04-030 states: "Biogas digester customer generation eligible under AB 2228 are not required to pay any CRS charges."

7. From 2006 to 2012, PG&E and the Fresno negotiated in good faith to resolve disputes concerning NBC obligations associated with generation from the wastewater treatment facility.

8. Prior to entering into the Settlement Agreement resolving their differences, Fresno and PG&E disagreed concerning the interpretation and applicability of D.03-04-030 as it related to Fresno's payment obligations under PG&E's tariff, Electric Schedule E-DCG.

9. After Fresno filed its application in this proceeding, Fresno and the PG&E jointly entered into a Settlement Agreement, as attached to this decision, the terms of which resolve all disputes between the two parties relating to Fresno's NBC obligations under Electric Schedule E-DCG.

Conclusions of Law

1. The application (A.12-07-010) of the City of Fresno should be resolved by adopting the Settlement Agreement attached to this decision without conducting further proceedings.

2. The Settlement Agreement attached to this decision meets the legal requirements for approval based on the standards set forth in Rule 12.1 of the Rules of Practice and Procedure in that it is reasonable in light of the whole record, consistent with applicable state and federal law, and in the public interest.

3. Since the Settlement Agreement represents a compromise of parties' respective litigation positions, the Settlement Agreement, and this decision approving it, do not constitute precedent regarding any principle and/or issue in future proceedings, including but not limited to R.02-01-011, A.12-07-010, and

any related proceedings or any other proceedings relating to charges identified in implementing Rate Schedule E-DCG which were authorized by the Commission.

4. Hearings are not necessary.
5. A.12-07-010 should be closed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement, attached to this decision, is hereby approved and adopted. The motion for approval of the Settlement Agreement is granted.

2. The applicability of the Settlement Agreement is limited to the signatories thereto.

3. Pacific Gas and Electric Company and the City of Fresno are directed to comply with the terms of the attached Settlement Agreement, as set forth in Section II thereof, entitled: "Settlement Terms."

4. The hearing determination is changed to no hearings necessary.
5. Application 12-07-010 is closed.

This order is effective today.

Dated _____ in San Francisco, California.